



VARIANCE STAFF REPORT

512 W. GEER STREET PLACEMENT VARIANCE B2100013

Meeting Date: April 27, 2021

Reference Name	512 W. Geer Street Placement Variance (Case B21000013)		Jurisdiction	City
Request	A request for a variance from the requirement that a minimum of 70% of the build-to-zone be occupied by the building podium.			
Site Characteristics	Tier	Downtown		
	Zoning District	Downtown Design – Support 1 (DD-S1)		
	Overlays	None		
	Site Acreage	0.57 acres		
Applicant	CJT, PA	Submittal Date	March 3, 2021	
Location	512 W. Geer Street			
PID(s)	105163			

A. Summary

Coulter Jewell Thames, PA, applicant for the property owner, requests a variance from the frontage requirements on a site located at 512 W. Geer Street. The site is zoned Downtown Design – Support 1 (DD-S1) and is within the Downtown development tier.

Per Section 16.2.1 of the Unified Development Ordinance (UDO), for the Support 1 (S1) Sub-District, primary structures are required to have a build-to zone between 12-18 feet from back-of-curb. Additionally, pursuant to UDO Section 16.2.1B, a minimum of 70% of the build-to zone shall be occupied by the building podium. The applicant proposes an alternative design that they believe would meet the intent of the Downtown Design district, which aims to encourage bicycle, pedestrian, and transit-oriented development. Instead of 70% of the build-to zone being occupied by the building podium, the applicant proposes the use of the building and a bicycle structure along Washington Street to meet the intent of the build-to zone minimum building podium requirement while providing pedestrian-oriented development. The build-to zone requirements will be met on the Geer Street frontage even with the proposed garden at the corner.

B. Summary of Issues

No issues were identified at the time of this report.

C. UDO Section 3.14 Variance

The Board of Adjustment may vary certain requirements of this Ordinance, in harmony with the general purpose of these regulations, where special conditions applicable to the property

in question would make the strict enforcement of the regulations impractical or result in a hardship in making reasonable use of the property.

UDO Section 3.14.8 establishes the findings listed below that the Board of Adjustment must make in granting any variance.

- 1. Unnecessary hardship would result from the strict application of the Ordinance. It shall not be necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property.***

Staff Analysis. Strict application of Section 16.2.1B of the Ordinance requires that 70% of the build-to-zone along the street frontages of both Geer Street and Washington Street be occupied by the building podium, a requirement that the applicant believes is impossible given the odd shape and size of the lot. The applicant is proposing a public garden, a storefront, and a bike shelter along the Washington St. frontage. The build-to zone requirements will be met on the Geer Street frontage even with the proposed garden at the corner. The odd shape and size of the lot would require the applicant to place the building within the narrow corner of Washington and Geer streets, which the applicant has expressed would be very difficult to design.

See Attachment 3, Application, for the applicant's responses to unnecessary hardship resulting from the strict application of the Ordinance.

- 2. The hardship results from conditions that are peculiar to the property, such as location, size, or topography. Hardships resulting from personal circumstances, as well as hardships resulting from conditions that are common to the neighborhood or the general public, may not be the basis for granting a variance.***

Staff Analysis. The subject site is a corner lot with two street frontages and an alley along the north property line. The size and shape of the parcel are the primary components of the applicant's argument that an unnecessary hardship exists. To ensure that the building placement requirement is met, the proposed building would need to occupy at least 70% of the build-to zone on both street frontages, which would be easier on a corner that is not as sharply angled as the one here.

See Attachment 3, Application, for the applicant's response to the hardship resulting from conditions that are peculiar to the property.

- 3. The hardship did not result from actions taken by the applicant or the property owner. The act of purchasing property with knowledge that circumstances exist that may justify granting a variance shall not be regarded as a self-created hardship.***

Staff Analysis. The lot size is not due to any actions by the applicant or property owner. Additionally, the applicant has not made any changes to the existing site that created a hardship.

See Attachment 3, Application, for the applicant's response contending that the hardship did not result from actions taken by the applicant or property owner.

4. *The requested variance is consistent with the spirit, purpose, and intent of the Ordinance, such that public safety is secured, and substantial justice achieved.*

Staff Analysis. The intent of the Ordinance is to promote the health, safety, and general welfare of the residents of the Durham City and County. In this spirit, the Ordinance provides development standards and, when necessary, aims to prescribe uniformity for specific types of development. UDO Section 4.5.1, the intent of the Downtown Design district is to encourage bicycle, pedestrian, and transit-oriented development. The applicant is requesting a variance from the required minimum of 70% of the build-to zone along the Washington Street frontage being occupied by the building podium due to the peculiar size and shape of the lot. The build-to zone requirements will be met on the Geer Street frontage even with the proposed garden at the corner.

See Attachment 3, Application, for the applicant's response contending that the request is consistent with the spirit, purpose, and intent of the Ordinance.

D. Notification

Staff certifies that newspaper advertisements, letters to property owners within 600 feet of the site and the posting of a sign on the property has been carried out in accordance with UDO Section 3.2.5 of the UDO. In addition, email notice was provided per the Durham Planning Public Notification Service.

E. Staff Contact

Eliza Monroe, 919-560-4137 ext. 28245, or Eliza.Monroe@durhamnc.gov

Attachments

1. Context Map
2. Durham GIS Aerial Photo
3. Application
4. Site Plan

F. Possible Motion

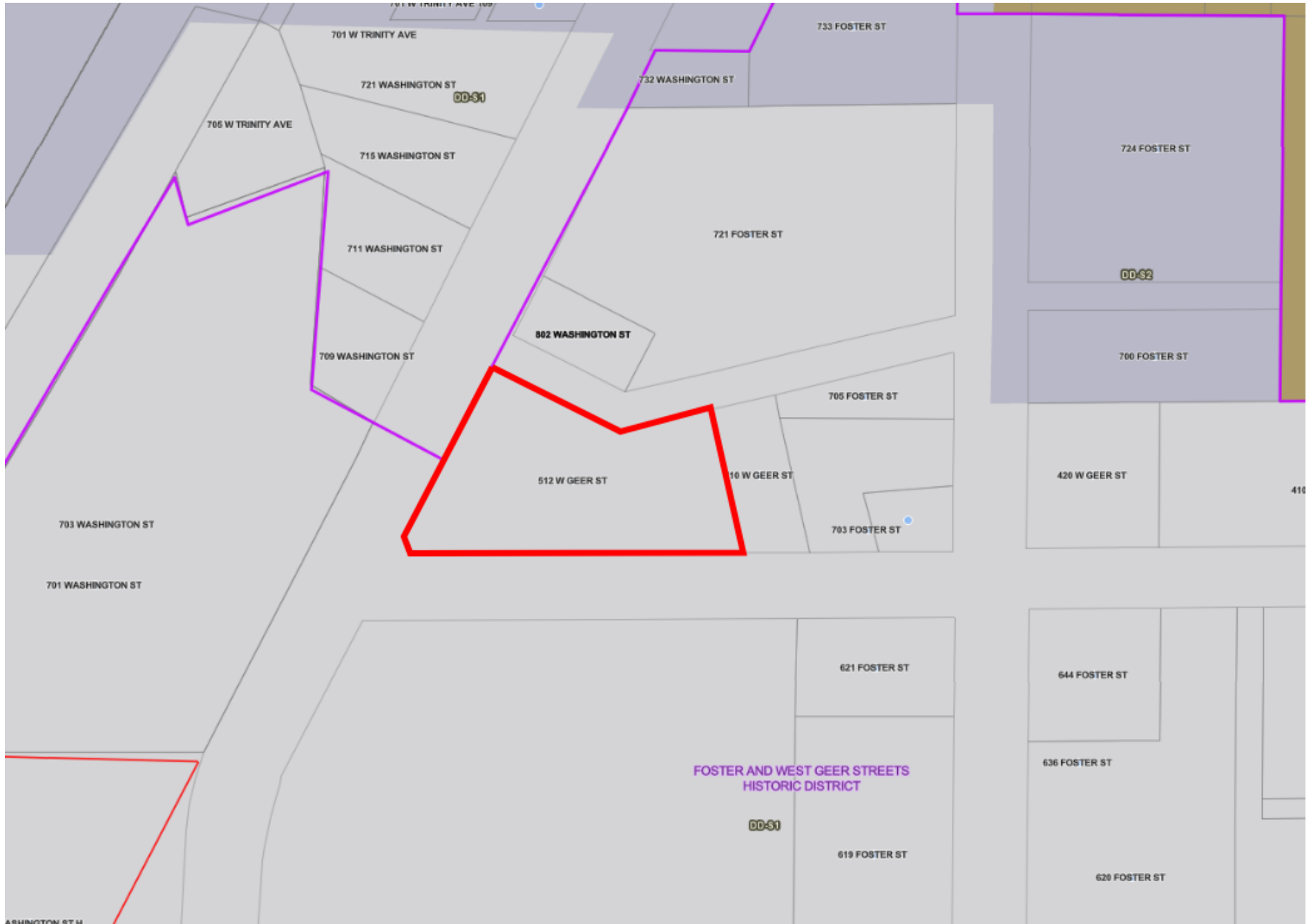
MOTION TO GRANT APPLICATION WITH CONDITIONS

I hereby make a motion that application number **B2100013**, a **request for a variance from the requirement that a minimum of 70% of the build-to-zone shall be occupied by the building podium**, on property located at **512 W. Geer Street**, has successfully met the applicable requirements of the Unified Development Ordinance and is hereby granted, subject to the following conditions:

- The improvements shall be substantially consistent with the plans and all information

submitted to the Board as part of the application.

B2100013 512 W. Geer Street Placement Variance
Context Map



B2100013 512 W. Geer Street Placement Variance
Aerial Map





Minor Special Use Permit (mSUP), Variance, and Reasonable Accommodation Application

City-County Planning Department

Planning

Download and open PDF document file before entering information

Application Guide and Submittal Portal: <https://dsc.durhamnc.gov/264>

Application Questions: BOA@durhamnc.gov | 919-560-4137

PROJECT INFORMATION:

Application Type: <input type="checkbox"/> mSUP <input checked="" type="checkbox"/> Variance <input type="checkbox"/> Reasonable Accommodation	
Site Address: 512 W. Geer	Total Site Area (in acres): 0.57
Zoning District(s): DD-S1	Zoning Overlay(s): N/A
Jurisdiction: <input checked="" type="checkbox"/> City <input type="checkbox"/> County <input type="checkbox"/> Both	Development Tier(s): Downtown
PIN(s): 0822-20-80-8355	Associated Site Plan Case Number: N/A
PID(s): 105163	
Current Use(s): Commercial	Proposed Use(s): Residential & Commercial

APPLICATION REQUIREMENTS (INCLUDE LIST NUMBER IN ATTACHMENT NAME WITH SUBMITTAL)

This application is a form of written testimony and is used to provide evidence that the required findings for approval can be made. The applicant has the burden of proof and must provide sufficient evidence in order for the required findings to be made.

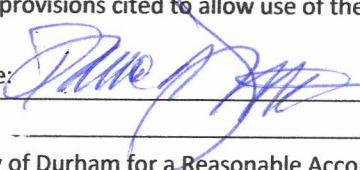
NOTE: Attendance at the Board of Adjustment hearing is required. Applicants may represent themselves or may be represented by someone appropriate for quasi-judicial public hearings. Decisions can be appealed to Superior Court within 30 days.

1. Documentation of the Pre-submittal Meeting (Required)	4. Floor Plan, Elevations, and Plot Plan or Site Plan, as applicable
2. Payment Receipts	(Additional supporting documents may be requested by the Case Planner and/or may be provided by the applicant)
3. For mSUPs: Responses to General Findings and Review Factors (UDO Section 3.9.8A and B), Additional Findings and/or Review Factors (if applicable), and Responses to Limited Use Standards (if applicable) For Variances: Responses to General Findings and Review Factors (UDO Section 3.14.8) For Reasonable Accommodations: Responses to General Findings (UDO Section 3.24)	

ACKNOWLEDGEMENTS AND PETITIONS

I, the undersigned, acknowledge that the application is complete and that all information included is accurate to the best of my knowledge. Applications are considered accepted only after they have been determined to be complete according to paragraph 3.2.4 of the Unified Development Ordinance, not upon submission.

	Owner	Applicant	Agent (if applicable)
Name:	George Davis	Dan Jewell	
Firm:	Stone Bros and Byrd, Inc	Coulter Jewell Thames, PA	
Phone:	919.682.1311	919.682.0368	
Email:	george@stonebrothers.com	djewell@cjtpe.com	
Address:	512 W. Geer St., Durham, 27701	111 W. Main St., Durham, 27701	
Digital Signature:			
Date Signed:	3/3/21	3/3/21	
All applications:	In granting a Minor Special Use Permit, Variance, or Reasonable Accommodation request, the Board of Adjustment may prescribe reasonable and appropriate conditions provided that the		

	<p>conditions are reasonably related to the request. The conditions shall become part of the approval. Violations of any of the conditions shall be treated in the same manner as other violations of the Ordinance.</p> <p>The Board of Adjustment may prescribe whether a reasonable accommodation is granted to the applicant or shall be allowed to pass with transfer of property.</p> <p>Furthermore, Special Use Permits and Variances shall become null and void in any of the following cases (Section 3.9.14 or 3.14.8 of the UDO):</p> <p>A. If a site plan or architectural review, as applicable, is not approved within 12 months of the date of permit approval.</p> <p>B. If an approved site plan, architectural review application, or building permit expires.</p> <p>C. If a building permit is not issued within two years of the date of approval, in cases where a corresponding site plan or architectural review is not required. In the case of a Variance, also if the Ordinance standard subject to the variance has been amended prior to the issuance of a building permit.</p> <p>D. If a substantial violation of the conditions of the permit, as determined by the Planning Director or designee occurs. The addition of language to the special use permit regarding such voiding shall not be required.</p> <p>Digital Signature: _____ Date Signed: _____</p>
<u>For mSUPs:</u>	<p>I, <u>I</u>, hereby petition the Durham Board of Adjustment for a Minor Special Use Permit to allow use of the property as described in material submitted with this request.</p> <p>Digital Signature: _____ Date Signed: _____</p>
<u>For Variances:</u>	<p>I, <u>Dan Jewell</u>, hereby petition the Durham Board of Adjustment for a Variance from the literal provisions cited to allow use of the property as described in material submitted with this request.</p> <p>Digital Signature:  Date Signed: <u>3/2/21</u></p>
<u>For Reasonable Accommodations:</u>	<p>I, <u>I</u>, do hereby petition the City of Durham/County of Durham for a Reasonable Accommodation to the Unified Development Ordinance provisions described in material submitted with this request to allow use of the property also as described in this request.</p> <p>Digital Signature: _____ Date Signed: _____</p>
RESPONSES REQUIRED (PLACE RESPONSES IN A SEPARATE WORD DOCUMENT FOR SUBMITTAL)	
Minor Special Use Permit Responses:	<ol style="list-style-type: none"> 1. Ordinance provision(s) that require and mSUP for this project 2. What is proposed? <p>General Findings: Applications for minor special use permits shall be approved only if the Board of Adjustment finds that the use as proposed, or the use as proposed with conditions, is:</p> <ol style="list-style-type: none"> 1. In harmony with the area and not substantially injurious to the value of properties in the general vicinity; 2. In conformance with all special requirements applicable to the use; 3. Will not adversely affect the health or safety of the public; and 4. Will adequately address the review factors identified below <p>Review Factors: The applicant shall demonstrate that the review factors listed below have been adequately addressed:</p> <ol style="list-style-type: none"> 1. Circulation: Number and location of access points to the property and the proposed structures and uses, with particular reference to automotive, bicycle, mass transit and pedestrian safety and convenience, traffic flow and control, and access in case of fire or catastrophe. 2. Parking and Loading: Location of off-street parking and loading areas. 3. Service Entrances and Areas: Locations of refuse and service areas with particular reference to ingress and egress of service vehicles. 4. Lighting: Locations of exterior lighting with reference to glare, traffic safety, economic effect and compatibility with other property in the area. 5. Signs: Appropriateness of signs considering location, color, height, size, and design within the context of other property in the area. 6. Utilities: Location and availability of utilities.

	<ol style="list-style-type: none"> 7. Open Spaces: Location of required yards and other open spaces and preservation of existing trees and other natural features 8. Environmental Protection: Preservation of tree coverage, Durham Inventory Sites, floodplain, stream buffers, wetlands, steep slopes, open space, and other natural features, and protection of water quality. 9. Screening, Buffering, and Landscaping: Installation of screening, buffering, fencing, and landscaping where necessary to protect adjacent property. 10. Effect on Adjacent Property: Effects of the proposed use on nearby properties, including, but not limited to, the effects of noise, odor, lighting, and traffic. 11. Compatibility: The level of general compatibility with nearby properties and impacted neighborhoods, including but not limited to the appropriateness of the scale, design, and use in relationship to other properties. 12. Consistency with Policy: Consistency with the Comprehensive Plan and applicable development tier guidelines, overlay purposes, and zoning district intent statements in Article 4, Zoning Districts. 13. Other Factors: Any other factors that the approving authority considers to be appropriate to the property in question. <p>Also address Limited Use Standards, as applicable</p>
<p>Variance Responses:</p> <p>Burden of Proof: The applicant seeking the variance shall have the burden of presenting evidence sufficient to allow the Board of Adjustment or Governing Body to reach the conclusions set forth below, as well as the burden of persuasion on those issues.</p>	<ol style="list-style-type: none"> 1. Ordinance provision(s) from which a variance is requested 2. What is proposed? 3. What the Ordinance provision(s) require <p>General Findings: The Board of Adjustment must make these findings in order to grant any variance.</p> <ol style="list-style-type: none"> 1. Unnecessary hardship would result from the strict application of the Ordinance. It shall not be necessary to demonstrated that, in the absence of the variance, no reasonable use can be made of the property. 2. The hardship results from conditions that are peculiar to the property, such as location, size, or topography. Hardships resulting from personal circumstances, as well as hardships resulting from conditions that are common to the neighborhood or the general public, may not be the basis for granting a variance. 3. The hardship did not result from actions taken by the applicant or the property owner. The act of purchasing property with knowledge that circumstances exist that may justify granting a variance shall not be regarded as a self-created hardship. 4. The requested variance is consistent with the spirit, purpose, and intent of the Ordinance, such that public safety is secured, and substantial justice achieved.
<p>Reasonable Accommodation Responses:</p>	<p>General Findings: Applications for Reasonable Accommodations shall be approved only if the Board of Adjustment finds based on competent, material, and substantial evidence, that the proposed accommodation:</p> <ol style="list-style-type: none"> 1. Will be used by an individual or individuals with a disability or handicap protected under federal law; 2. Is "reasonable." An accommodation is reasonable if it will not undermine the legitimate purposes and effects of existing zoning regulations, and if it will not impose significant financial and administrative burdens upon the city or county and/or constitute a substantial or fundamental alteration of the ordinance provisions; 3. Is "necessary." An accommodation is necessary if it will provide direct or meaningful therapeutic amelioration of the effects of the particular disability or handicap, and it will afford handicapped or disabled persons equal opportunity to enjoy and use housing in residential districts in the city or county.

512 W. Geer St. Variance Request

Burden of Proof: The applicant seeking the variance shall have the burden of presenting evidence sufficient to allow the Board of Adjustment to reach the conclusions set forth below, as well as the burden of persuasion on those issues.

Ordinance provision(s) from which a variance is requested:

UDO 16.2.1.B. Percent Placement

For all **frontage** types, except as specified below, a minimum percentage of the **build-to zone** shall be occupied by the **building podium**, calculated as a linear measurement within the build-to zone along the width each street frontage of the **development** site.

For the purpose of this request and zoning district, the required percentage is 70%

This is what I want to do:

To provide an alternative means of meeting the intent of the percent placement standards

Ordinance provisions require:

70% of the build-to zone to be occupied by building podium

Section 3.14.8 of the Unified Development Ordinance (UDO) calls out the following "Findings" which the Board of Adjustment must make in granting any variance:

1. Unnecessary hardship would result from the strict application of the Ordinance. It shall not be necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property.

Applicant's Response:

Due to the atypical shape of the property based on the acute angle created by Geer and Washington Streets, it is not practical to meet these building placement requirements short of creating many small "steps" in the Washington Street frontage of the building. In addition, those steps would steel not create the active and continuous street facade that this provision of the ordinance is intended to do. Instead we propose to provide an alternative means of activating this frontage through a combination of the building wall and incorporation of a structure that enlivens the sidewalk, provides some whimsical and historical reference through architecture and art that is evocative of the existing Stone Bros and Byrd building that has existed at this location for nearly 60 years, but still provides a "wall" along the sidewalk to eliminate a long, inactive dead zone that the provisions of this portion of the UDO try and prevent.

Absent granting this Variance request, the property cannot be developed to the extent that is financially viable nor in keeping with the intent of the current Downtown

design District Zoning in a way that contributes to the urban fabric of this portion of downtown.

2. The hardship did not result from actions taken by the applicant or the property owner. The act of purchasing property with knowledge that circumstances exist that may justify granting a variance shall not be regarded as a self-create hardship.

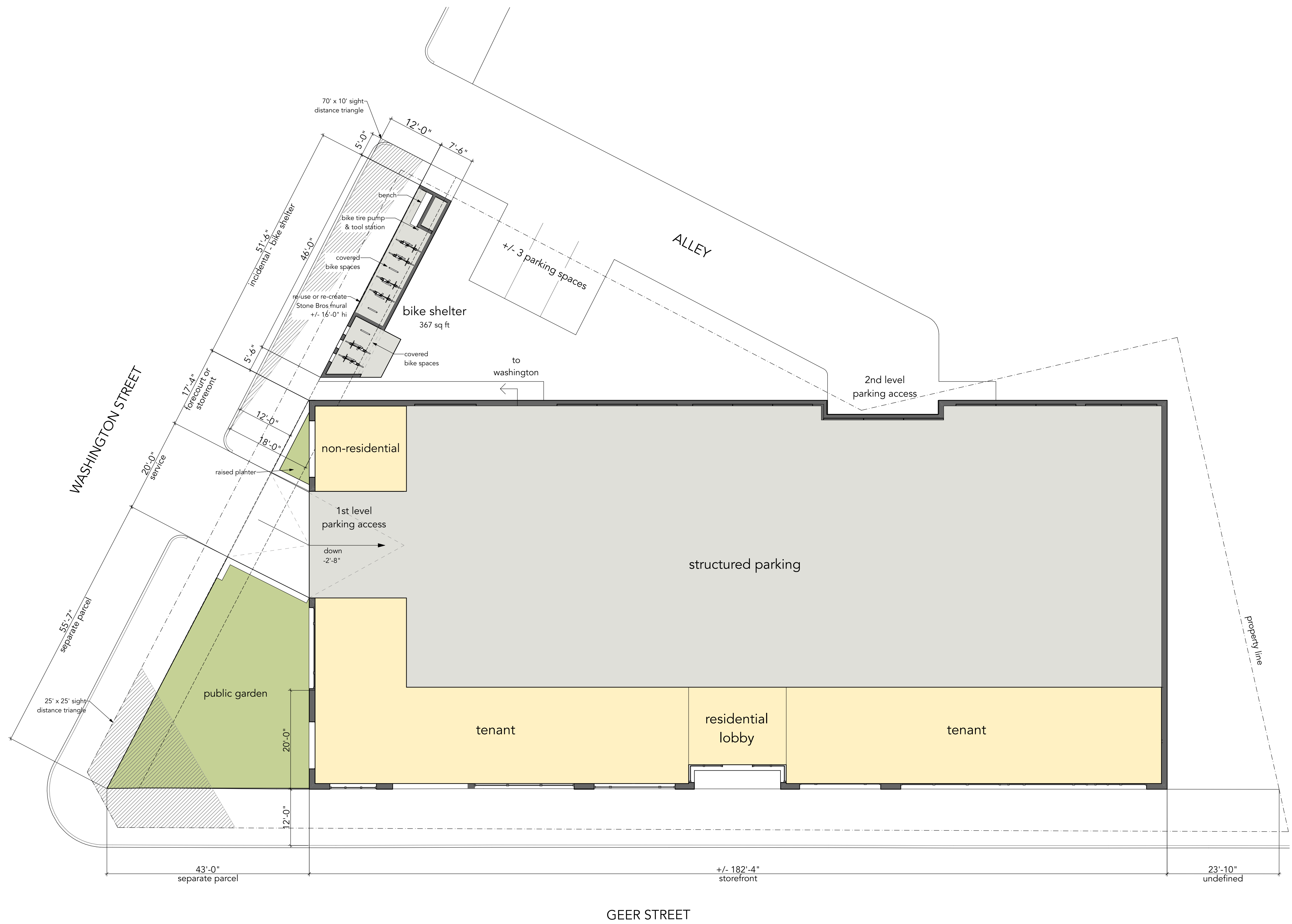
Applicant's Response:

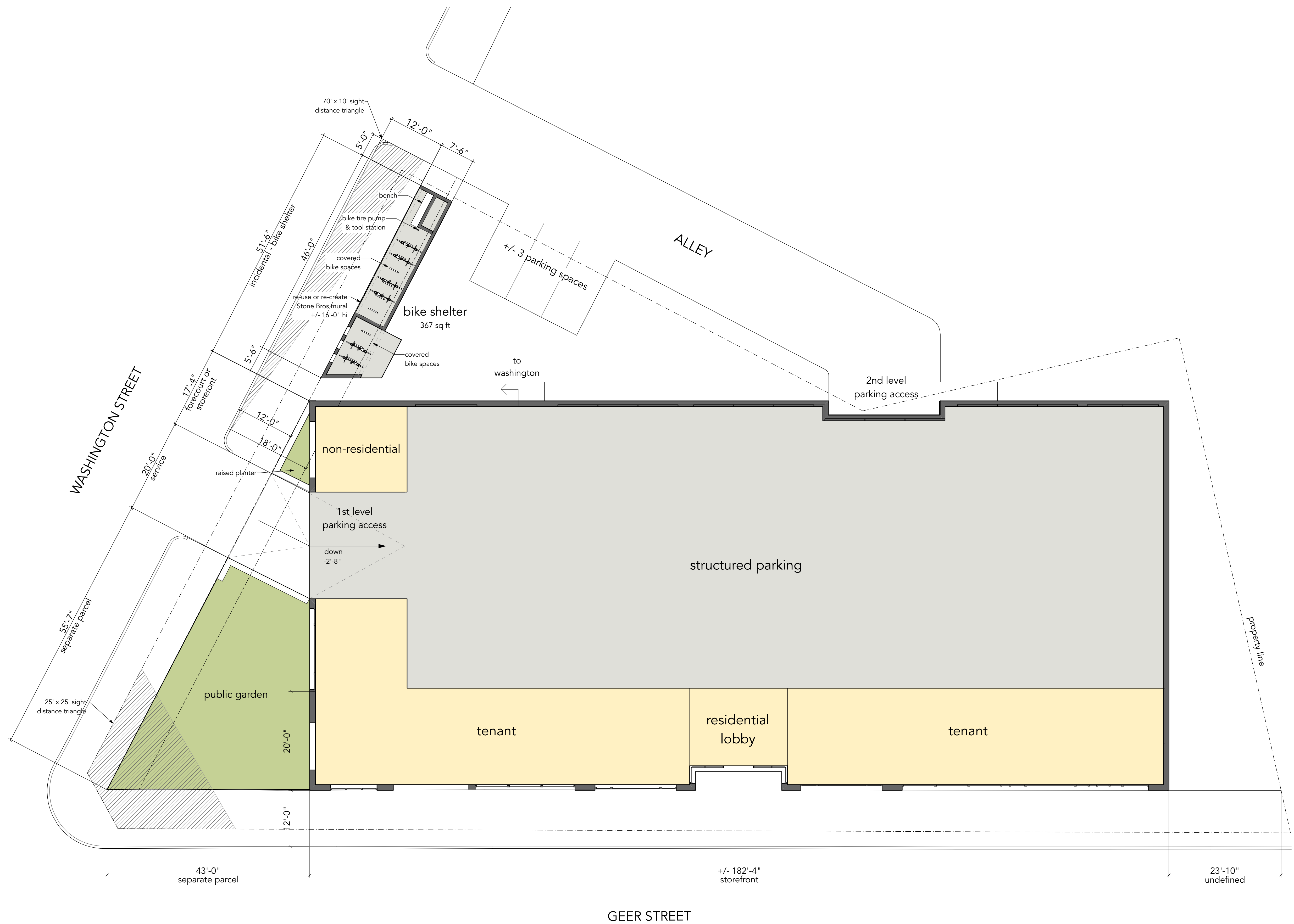
None of the following conditions resulted from actions taken by the applicant or owner:

1. Acute angle of the western portion of the site created by the acute angle of the intersection of Geer and Washington Streets.
 2. The acute angle created by the intersection of Washington Street and the alley on the northern edge of the property further create a "pocket" that is impractical to construct a building meeting the podium and frontage requirements.
3. The requested variance is consistent with the spirit, purpose, and intent of the Ordinance, such that public safety is secured, and substantial justice achieved.

Applicant's Response:

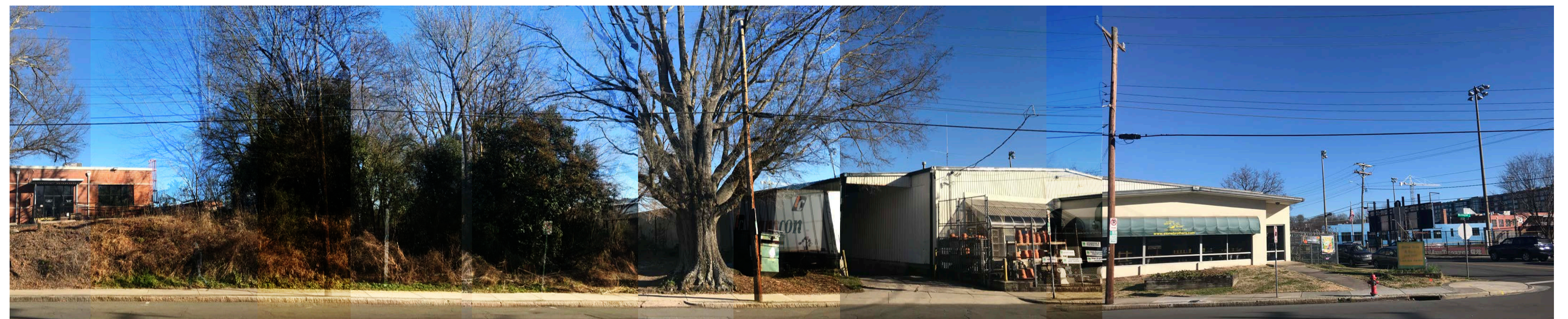
Approval of this requested variance with the proposed alternative means of complying with the spirit and intent of this portion of the UDO would be fully consistent with the intent, spirit, and purpose of the UDO, the downtown Design District, and Durham's Comprehensive Plan.



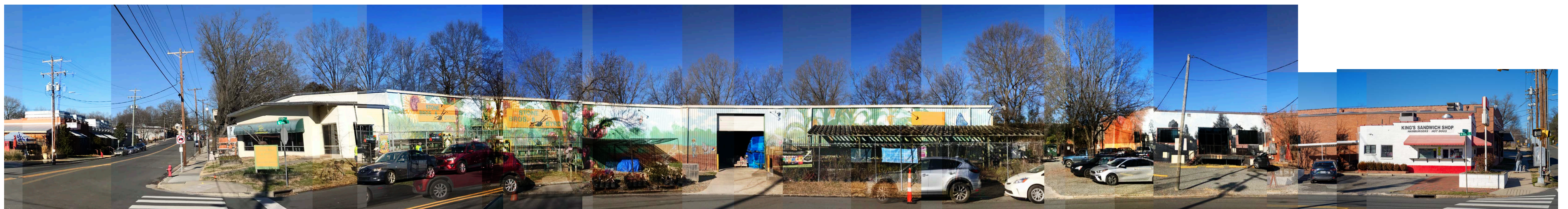




Proposed Washington St - looking North



Existing Washington St - Looking East



Existing Geer St - Looking North